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TRASURY FOR OASIA

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SUBJECT: NEW ZEALAND - 2007 NATIONAL TRADE ESTIMATE REPORT

REF: State 136302

¶1. Following is post's input for 2007 National Trade Estimate Report on New Zealand per request reftel. We assume that Washington agencies will provide updated trade and investment data.

¶2. Begin text of NTE submission:

IMPORT POLICIES

In general, tariff rates in New Zealand are low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s and continued until the current Labour government, elected in 1999, froze further reductions until July 2005. The New Zealand government announced in September 2003 that it would resume unilateral tariff reductions starting July 1, 2006. Under this unilateral tariff reduction programme New Zealand has begun implementing gradual reductions of its highest tariff rates (currently 17 percent), which will take these tariffs to 10 percent by July 1, 2009. These top rates apply mostly to clothing, footwear, and carpet. Ad valorem tariffs on all other dutiable goods will reduce to 5 percent by July 1, 2008.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology Regulations

New Zealand's Environmental Risk Management Authority (ERMA), an independent body, reviews applications for the release of new organisms, including biotechnology products that contain living organisms. Using a risk management approach, ERMA assesses applications on a case-by-case basis and can issue three types of approvals: contained field test, conditional release with conditions, and full, unconditional release. The Ministry of Agriculture and Forestry (MAF) enforces compliance of field tests and conditional release approvals. To date, ERMA has only approved a small number of contained field tests. There have been no applications for either a conditional or a full release of genetically modified organisms in New Zealand.

Containment approvals include those conducted in enclosed laboratories, glasshouses and outdoors in field test situations. When assessing an application for a containment approval, ERMA focuses on the adequacy of containment and, if an escape should occur, the effect of the organism on the environment. ERMA recently received an application from Crop and Food Research to conduct a

contained field test for broccoli, cabbage and cauliflower genetically engineered for pest resistance. Three years ago, ERMA approved an application from the same organization to field test genetically engineered onions.

Release approvals include both conditional release, where controls can be placed on the organism to manage risks, and full release where no controls are imposed, which makes it extremely unlikely that a full release would be granted for a biotechnology product. The process for GM field test or release applications is much more onerous than for a full, non-field test containment application. Among other things, applicants for a conditional or full release must provide ERMA with detailed information and analysis that enables them to conduct a full scale risk assessment that takes into account a broad range of scientific and economic factors in the decision making process. This includes the possible impact of a release on New Zealand's clean green image and the organic sector.

Until October 2003, New Zealand maintained a voluntary two-year moratorium on the introduction of all biotechnology products, which precluded applications for the commercial planting of biotechnology crops, the commercial importation of genetically modified seeds, the release into the environment of genetically modified animals and, to a lesser extent, some human and veterinary medicines containing biotechnology products. The moratorium, however, did not apply to the use and sale of processed genetically modified foods and ingredients. With the moratorium's expiration and the report of the Royal Commission on Genetic Modification, Parliament amended the Hazardous Substances and New Organisms Act 1996 to make the regulation of biotechnological research more workable and to facilitate controlled release of biotechnology products. The amendment, the New Organisms and Other Matters Bill of 2003, introduced the conditional release category for approval of new

organisms.

Biotechnology Food Approval

Imported genetically modified foods for sale in New Zealand must be assessed and approved by Food Standards Australia New Zealand (FSANZ), which is the bi-national food regulatory authority for New Zealand and Australia. FSANZ is responsible for the development of regulations in the Australia - New Zealand Food Standards Code (the Code). The New Zealand Food Safety Authority (NZFSA) is responsible for implementation and enforcement of the Code within New Zealand.

A mandatory standard for foods produced using modern biotechnology came into effect in mid-1999. The standard which was established under the Food Act of 1981 prohibits the sale of food produced using biotechnology unless such food has been assessed by FSANZ and listed in the food code standard. As of November 2006, FSANZ has received a total of 38 applications for assessment of bioengineered foods. Of these, 31 applications had been approved and five are under assessment. Two requests had been withdrawn.

Biotechnology Food Labeling

Mandatory labeling requirements for foods produced using gene technology took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein resulting from genetic modification must be so labeled. Meeting New Zealand's biotechnology food labeling regulations can be burdensome and is especially relevant for U.S. agricultural exporters who deal primarily in processed food. New Zealand wholesalers and retailers frequently demand biotechnology-free declarations from their suppliers. This effectively places liability for any biotechnology labeling non-compliance on the importer. New Zealand food legislation requires businesses to exercise due diligence in complying with food standards, which usually is defined as maintaining a paper or audit trail similar to a quality assurance system.

The NZFSA conducts periodic compliance audits. Violators of food-labeling requirements can be assessed penalties under the Food Act 1981. The New Zealand government is reviewing penalties stipulated under the Act to ensure that they represent an adequate economic deterrent. The effect of these regulations is to discourage New Zealand food retailers from carrying biotechnology food products.

Sanitary and Phytosanitary Measures

New Zealand maintains a strict regimen of sanitary and phytosanitary (SPS) controls for virtually all imported agricultural products. The United States and New Zealand continue to discuss specific SPS issues that negatively impact trade in products supplied by the United States.

In 2006, New Zealand implemented new processes for undertaking risk analyses and developing import health standards. This initiative is intended to streamline existing processes and provide consistency in the way New Zealand undertakes these tasks.

As of July 1, 2006, New Zealand also implemented a new system for funding and managing the development of import health standards. The new system is intended to be more transparent, direct government resources to the highest priorities, and increase the resources available for developing import health standards.

During the 2006 Trade and Investment Framework Agreement discussions, the USG requested that New Zealand develop an import standard for Pacific Northwest (PNW) stone fruit (plums, peaches, nectarines and apricots). In response to the U.S. request, New Zealand has added PNW stone fruit to their 2006-2007 import health standard development work program. Details on the timing for issuing the import health standard will be confirmed once the work has commenced. The 2006-07 work program also includes a review of import requirements for citrus from the United States.

New Zealand recently completed a risk assessment of U.S. chilled pork. To date, this product has been subject to a pre-cooking requirement because of the presence of Porcine Reproductive and Respiratory Syndrome (PRRS) in the United States. While the analysis confirmed that there is a risk of PRRS disease entering NZ, the Ministry of Agriculture and Forestry (MAF) is recommending that high value chilled cuts of pork be allowed entry without any

sanitary treatment. To date, MAF has received 44 submissions, including two from the United States. All submissions must be reviewed and considered before MAF can move to the next phase, which is drafting an import health standard.

New Zealand's import health standard for wood packaging material came into effect in May 2006 and enforcement of the standard was phased in over the following two months. However, New Zealand retained a pre-existing requirement that all wood packaging materials be bark-free. The United States has requested that New Zealand suspend the implementation of the bark-free requirement until the findings of on-going international research on the risk of pest transmission through bark is released. However, New Zealand maintains that freedom from bark needs to be met to gain biosecurity clearance, which could take the form of debarking at destination. The USG continues to address this issue with New Zealand.

The New Zealand Food Safety Authority (NZFSA) requires case-by-case assessment of U.S. bovine products before importation due to concerns over Bovine Spongiform Encephalopathy (BSE). NZFSA has completed an assessment of the U.S. BSE regime and has indicated that it will lift that restriction once both sides agree on certification language that must accompany meat imports. Discussions are currently underway on the revised certification language.

Imports of U.S. poultry meat (except canned product) remain suspended due to restrictions on countries that have infectious bursal disease.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The New Zealand government has proposed amendments to strengthen its copyright and patent laws and enhance the country's protection of intellectual property rights. With proposed amendments to the Copyright Act 1994, the government aims to address developments in digital technologies and international developments in copyright law and to bring New Zealand law into closer conformity with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The amendments are expected to be reviewed and approved by the Cabinet before they are introduced in Parliament by end of 2006. If this legislation is enacted, the New Zealand government then will determine whether to accede to the WCT and WPPT treaties.

The Ministry of Economic Development in December 2004 released draft legislation that is intended to replace the Patents Act 1953 and to bring New Zealand's patent law into closer conformity with international standards. This draft would keep the maximum patent term at 20 years, but would tighten the criteria for granting a patent, from a patentable invention being new in New Zealand, to being new anywhere in the world and involving an inventive step. The Government hopes to introduce the legislation by the end of ¶2006.

The U.S. music industry opposes a proposed amendment to the New Zealand Copyright Act that would legalize the duplication of sound recordings in other formats for a purchaser's private use. The government says this would enable consumers to employ new digital technologies and would legalize what already is common practice. The government also notes the amendment would limit copying to one copy per format, specify that the original sound recording must be legitimate, and exclude making copies from borrowed or rented recordings. The music industry warns that such an exception to copyright protection would make copyright infringement difficult to enforce, send the wrong message to consumers and cost the industry in sales revenue and profits. The industry adds that the exception would discourage the development of music products that would permit home copying under contractual arrangements between the consumer and the provider.

In the absence of a broad fair use provision in the New Zealand legislation, the government maintains that a specific exception is required to allow New Zealand consumers to engage in format shifting afforded U.S. consumers. The New Zealand government believes the proposed exception is arguably narrower than that covered under the fair use doctrine, as it specifically limits copying to one copy per format, specifies that the original sound recording must be legitimate and explicitly excludes making copies from borrowed or hired recordings. The music industry has, nevertheless, opposed the exception, and the Associate Minister of Commerce, Judith Tizard, who has portfolio responsibility for intellectual property, has been engaged in an on-going dialogue with the industry. The government

was flexible on the drafting of the proposed exception and added a sunset clause and a condition that the exception would be overridden by any license provision in an attempt to address industry concerns.

Additionally, the industry favors a wider approach to technological protection measures (TPMs) than that provided in the governments proposed amendments. The government's proposal would prohibit the supply of devices or the means or information to circumvent TPMs that would result in infringing any of the copyright owner's exclusive rights, and not just copying as now specified in the legislation. The industry says the act of circumventing a TPM also should be illegal. It also wants protection against the circumvention of TPMs that control access to copyright material, in addition to TPMs that control copying.

U.S. industry also has expressed concern over a proposed exception to the Copyright Act that would allow the unauthorized delays for

virtually all works communicated to the public. The industry warns that the exception would discourage rights holders from developing new approaches to meeting consumer demand for electronically delivered materials and reduce access and choice for New Zealand consumers to these materials. The Act currently provides an exception (section 84) for time shifting of broadcasts or cable programs for private and domestic use and solely for the purpose of watching or listening at a more convenient time. The government has decided that, in line with the policy of technological neutrality, this section should be amended to cover all communication works, except those available on demand. The exception explicitly relates only to watching or listening at a more convenient time. It does not allow home users to build up a collection or "library" of films or music for ongoing and repeated use. Where the exception does not apply, copying without the copyright owner's permission will continue to constitute infringement.

Some U.S. industries, particularly producers and distributors of music and software, have voiced concerns about New Zealand law that allows parallel imports of certain copyrighted goods, saying such imports make it more difficult to detect and combat piracy and erode the value of their products in New Zealand and third-country markets. The New Zealand Parliament in October 2003 enacted a ban on the parallel importation of films, videos and Digital Video Discs (DVDs) for the initial nine months after a film's international release, but the ban does not apply to parallel importation of music, software and books. The ban is scheduled to sunset in 2008, unless extended.

The October 2003 legislation, which amended the Copyright Act 1994, makes it easier to challenge copyright violations in court by shifting the burden of proof in certain copyright infringement cases to the defendant, who must prove that an imported film, sound recording or computer software is not a pirated copy.

In New Zealand's draft patents legislation, a prohibition of patents for methods of medical treatment concerns some pharmaceutical companies. The industry also is concerned by the Cabinet's decision in mid-2004 to halt a study on the economic impact of extending patent terms for pharmaceuticals. The draft patents bill fails to address the issue of patent terms for pharmaceuticals. The pharmaceutical industry group, Researched Medicines Industry Association of New Zealand, contends that New Zealand's effective patent life for pharmaceuticals has substantially eroded. It asserts that extending the effective patent term would be in line with international best practices.

The pharmaceutical industry also is concerned by an amendment, enacted in December 2002, to the Patents Act 1953. This amendment states that it is not a patent infringement for a person to make, use, exercise or vend an invention for purposes related to gaining regulatory approval in New Zealand or other countries. This provision can be used to effectively expedite, or "springboard," the approval process for generic competition to products whose patents are expiring. The pharmaceutical industry strongly opposes this legislation.

SERVICES BARRIERS

Local Content Quotas

Radio and television broadcasters have adopted voluntary local content targets, but only after the New Zealand government made it clear that it would otherwise pursue mandatory quotas. Although New

Zealand government officials have said they are sensitive to the implications of quotas under the WTO General Agreement on Trade in Services (GATS), they reserve the right to impose them.

Telecommunications

U.S. industry has expressed concern about the fees charged for completing calls using mobile networks in New Zealand, which are among the highest in the world. After a year-long investigation into mobile termination rates, the New Zealand regulating authority determined in June 2005 that mobile network operators were able to set unreasonably high rates because of limited market competition, and called for such charges to be regulated. The Communications Minister in August 2005 agreed with the authority's position that the termination rates should be significantly reduced, but asked the authority to reconsider its recommendations by examining several issues, including commercial offers by New Zealand's two mobile phone service providers for rate reductions and how best to ensure that end users benefit from reductions in wholesale rates. On 21 April 2006, the Minister received the Commission's reconsideration final report on the Schedule 3 Investigation into Regulation of Mobile Termination. The Commission recommends regulation of the termination of voice calls made from fixed home or business phone lines to all mobile networks, including those using 3G technologies. Under the Telecommunications Act 2001 the Minister may accept the Commission's reconsidered recommendation, reject the Commission's reconsidered recommendation, or request the Commission to reconsider again its recommendation. In August 2006 the Ministry of Economic Development sought cross-submissions on the submissions and a proposed "industry solution" regarding a Commerce Commission report that recommends regulation of mobile termination rates. The Ministry is advising the Minister of Communications who, under the Telecommunications Act, may accept, reject, or require the Commission to reconsider its recommendation.

Competitors of the formerly state-owned monopoly, Telecom, were disappointed by the New Zealand government's decision in May 2004 against unbundling the local loop. Although under competitive pressure, Telecom still dominates the market. The Communications Minister accepted the regulator's recommendation against ordering Telecom to open its national fixed-line network to competitors. Saying he aimed to increase competition in broadband services, the Minister also agreed with the regulator's recommendation to require bitstream unbundling, or access to Telecom's equipment by service providers in order to sell their own broadband services. TelstraClear, Telecom's primary land-line competitor, in November 2004 asked the regulator to determine the terms and conditions for access to Telecom's unbundled bitstream service.

On May 3, 2006, the New Zealand Minister of Communications announced a comprehensive package of reforms to improve the telecommunications regulatory environment. This package of measures was developed as part of an overall review of the telecommunications sector commissioned by the Minister of Communications in December 2005, and led by the Ministry of Economic Development. A draft Telecommunications Amendment Bill is currently before parliamentary Select Committee for consideration.

The key changes to be introduced through the Bill include:
- new processes, and enhancements to existing ones, to address specific problems encountered in the implementation of the original Act;
- enhanced enforcement disciplines to facilitate more effective implementation of regulatory and statutory requirements;
- further regulated services in order to promote competition in the supply of key telecommunications services for the long term benefit of end users; and
- information disclosure and accounting separation framework to address information asymmetries between access providers, access seekers and the regulator.

The key amendments that the Bill introduces are, in summary:
- introduction of a standard terms determination process and a formal undertakings regime to ensure that access terms and conditions for regulated services are set in an effective and timely manner;
- empowering the Commerce Commission to continuously monitor the performance of the telecommunications sector and thereby enhance the Commission's ability to promote effective competition in the sector;
- addition of regulated local loop unbundling and support services and amendment of the existing regulated bitstream service to remove performance restrictions and clarify that it can be purchased as "naked DSL";

- introduction of enhanced enforcement mechanisms and an information disclosure regime to ensure compliance with statutory and regulatory obligations;
- introduction of accounting separation requirements for Telecom to increase the transparency of its wholesale and retail operations;
- enhancing the opportunity for access seekers to apply for the supply of designated and specified regulated services;
- changing the provisions mandating automatic expiry of regulated services to instead require that the Commission periodically review the need for regulation of services; and
- empowering the Minister to be able to make regulations to establish an independent telecommunications consumer complaints process and to set requirements relating to the provision of emergency call services.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens certain types of foreign investment through the Overseas Investment Office (OIO). Amid growing public concern about purchases of coastal properties by foreigners, the New Zealand government enacted legislation in August 2005 that increased screening and monitoring of land purchases, but raised the minimum threshold for scrutiny of proposed business purchases. Under the legislation, the threshold for screening non-land business assets has increased from NZ $50 million to NZ $100 million, where a foreigner proposes to take ownership or control of 25 percent or more of a business. Government approval is required for purchases of land larger than 5 hectares (12.35 acres) and of land in certain sensitive or protected areas. Any application involving land in any form must meet a national interest test. For land purchases, foreigners who do not intend to live in New Zealand must provide a management proposal covering any historic, heritage, conservation or public access matters and any economic development planned. That proposal would have to be approved and generally made a condition of consent. In addition, investors would be required to report regularly on their compliance with the terms of the consent. Overseas persons also must demonstrate the necessary experience to manage the investment. The OIO, part of Land Information New Zealand, took over the functions of the Overseas Investment Commission in August 2005. The United States has raised concerns about the continued use of this screening mechanism. New Zealand's commitments under the GATS Agreement of the WTO are limited as a result of New Zealand's screening program.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continued to raise concerns about New Zealand's pharmaceutical sector policies, which do not value innovation and discourage investment in the research and development of innovative pharmaceutical products. New Zealand's Pharmaceutical Management Agency (PHARMAC), a stand-alone Crown entity, administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand government and the reimbursement paid for each pharmaceutical under the national health care system. The schedule also specifies conditions for prescribing a product listed for reimbursement. PHARMAC accounts for 73 percent of New Zealand's expenditures on prescription drugs. The government also supports hospitals' pharmaceutical expenditures, bringing its share of total spending on prescription drugs in the country to about 80 percent. To counter the assertion that the Government does not value investment in pharmaceutical research and development, District Health Boards (DHBs - responsible for determining the allocation of public funds for pharmaceuticals and other aspects of health care) and PHARMAC have established a fund for the health sector that is

administered by the Health Research Council. More broadly, companies invest $20-40 million in New Zealand-based pharmaceutical research, in addition to the $73 million Health Research Council funding. This is part of the more than half a billion dollars the Government invests in research and science each year.

New Zealand does not directly restrict the sale of non-subsidized pharmaceuticals in the country. However, private medical insurance companies will not cover the cost of non-subsidized medicines and doctors are often reluctant to prescribe them to patients who would have to pay the cost out of pocket. Thus, PHARMAC's decisions have

a major impact on the availability and price of non-subsidized medicines and the ability of pharmaceutical companies to sell their products in the New Zealand market. The Government counters that the coverage of pharmaceuticals by private health insurance is a matter for those insurers to determine. The Government does not take decisions about insurance coverage. The Government assumes that insurers consider both affordability and cost-effectiveness of individual pharmaceuticals when determining the coverage of their policies.

The U.S. government has serious concerns regarding the transparency, predictability and accountability of PHARMAC's operations. U.S. pharmaceutical suppliers maintain that the methodology used to determine Pharmaceutical Schedule decisions lacks transparency. Meanwhile, PHARMAC is reviewing the way it decides funding for high-cost medicines. Efforts have been made by PHARMAC and the Government in recent years to increase transparency and clarify the integrity of the appointment process to the Pharmacology and Therapeutic Advisory Committee. PHARMAC has also recently consulted on its methodology for cost-utility analysis and its Operating Policies and Procedures.

Also, the Labour Party, in an agreement to form a new government in October 2005 with support from the United Future party, agreed to review the nation's long-term medicines strategy, including PHARMAC's role. The next stage of this work is the post-Cabinet release of a consultation document. The Ministry notes that this work is looking within existing systems and policy settings to identify where improvements can be made to ensure the best health and disability support gains from medicines over the coming years.

The New Zealand and Australian governments signed a treaty on December 10, 2003, to create a joint agency to regulate medical devices, prescription and over-the-counter medicines, dietary and nutritional supplements, and cosmetics such as sun creams. Aside from prescription pharmaceuticals, New Zealand does not currently regulate market entry of these products. Implementing legislation is expected to be introduced by end of 2006. The bill is expected to grandfather products that are already lawfully on the market at the time of the implementation of the legislation. The bill would grant an interim license valid for a transition period of three years. Discussion is ongoing as to possibly extending the term of transition to five years. It is expected that the new agency will charge full cost-recovery fees to register products and require additional documentation and assessments for certain products, even if they already have U.S. Food and Drug Administration approval. Each country's government will continue to separately determine funding of prescription medicines. U.S. manufacturers and distributors of non-pharmaceutical therapeutic products in New Zealand have expressed concerns that those requirements will be overly burdensome and costly, and could serve to discourage exports of their products from the United States to New Zealand. END TEXT.

McCormick